

with regard to provisions in its license, requiring the licensee to:

- (1) Provide data to the Archive for the basic data set;
- (2) Make data available to the Archive that the licensee intends to purge from its holdings;
- (3) Make data available to a sensed state; and
- (4) Restrict acquisition and dissemination of imagery as imposed by the license or by the Secretary of Commerce; and
- (5) Manage the re-entry segment, including but not limited to, the disposal of the system.

§ 960.10 Appeals/hearings.

(a) An applicant or licensee may submit a written appeal to the Administrator involving the granting, denial, or conditioning of a license; a license amendment; a foreign agreement; or enforcement action under this part. The appeal must state the action(s) appealed, must set forth a detailed explanation of the reasons for the appeal, and must be submitted within twenty-one (21) days of the action appealed. The appellant may request a hearing on the appeal before a designated hearing officer.

(b) The hearing shall be held no later than thirty (30) days after receipt of the appeal, unless the hearing officer extends the time. The appellant and other interested persons may appear personally or by counsel and submit information and present arguments, as determined appropriate by the hearing officer. Hearings may be closed to the public as necessary to protect classified or proprietary information. Hearings shall be transcribed, and transcripts made available to the public, as required by statute. Classified and proprietary information shall not be included in the public transcripts. Within thirty (30) days of the conclusion of the hearing, the hearing officer shall recommend a decision to the Administrator.

(c) The hearing requested under paragraph (a) of this section may be granted unless the issues being appealed involve the conduct of military or foreign affairs functions. Determinations concerning limitations on data collection or distribution, license conditions,

or enforcement actions necessary to meet national security concerns, foreign policies or international obligations are not subject to a hearing under this Section. A determination to deny an appeal/hearing on this basis shall constitute final agency action.

(d) The Administrator may adopt the hearing officer's recommended decision or may reject or modify it. The Administrator will notify the appellant of the decision, and the reason(s) therefor, in writing, within thirty (30) days of receipt of the hearing officer's recommended decision. The Administrator's action shall constitute final Agency action.

(e) Any time limit prescribed in this section may be extended for a period not to exceed thirty (30) days by the Administrator for good cause, upon his/her own motion or written request from the appellant.

(f) The licensee shall be entitled to an expedited hearing on the review of a foreign agreement if the request is filed with the Administrator within seven (7) days of the date of mailing of the Assistant Administrator's notice under § 960.8(d)(1). The request shall set forth the licensee's response to the determinations contained in the notice, and demonstrate that the time necessary to complete the normal hearing process will jeopardize the agreement.

(1) Expedited hearings shall commence within five (5) days after the filing of the request with the Administrator unless the Administrator or the Hearing Officer postpones the date of the hearing or the parties agree that it shall commence at a later time.

(2) Within five (5) days of the conclusion of the hearing, the Hearing Officer shall prepare findings and conclusions for consideration by the Administrator.

(3) Within fourteen (14) days after receipt of such material, the Administrator shall issue his/her findings and conclusions and a statement of the reasons on which they are based. This decision constitutes final agency action.

§ 960.11 Conditions for operation.

(a) Each license issued for the operation of a system shall require the licensee to comply with the Act and the regulations in this part. The licensee

shall ensure that its license information is kept current and accurate. A licensee's failure to notify NOAA in a timely manner of any changes to that information on which the determination to issue the license or a subsequent licensing action was or will be made may result in penalties for non-compliance being levied, pursuant to Section 203(a)(3) of Public Law 102-555.

(b) The following conditions, as a minimum, shall be included in all licenses:

(1) The licensee shall operate its system in a manner that preserves the national security and observes the foreign policy and international obligations of the United States. Specific limitations on operational performance, including, but not limited to, limitations on data collection and dissemination, as appropriate, will be specified in each license.

(2) The licensee shall maintain operational control from a location within the United States at all times, including the ability to override all commands issued by any operations centers or stations.

(3) The licensee will maintain and make available to the Assistant Administrator records of system tasking, operations and other data as specified in the license for the purposes of monitoring and compliance. Periodic reporting and record keeping requirements will be specified in the license. The licensee shall allow the Administrator access, at all reasonable times, to all facilities which comprise the remote sensing space system for the purpose of conducting license monitoring and compliance inspections.

(4) The licensee may be required by the Secretary to limit data collection and/or distribution by the system as determined to be necessary to meet significant national security or significant foreign policy concerns, or international obligations of the United States, in accordance with the procedures set forth in the Interagency MOU Fact Sheet. During such limitations, the licensee shall, on request, provide unenhanced restricted images on a commercial basis exclusively to the U.S. Government using U.S. government-approved rekeyable encryption on the down-link and shall use a data

down-link format that allows the U.S. Government access to these data during such periods.

(5) A licensee shall notify the Administrator of its intent to enter into any significant or substantial foreign agreement, and shall submit this agreement for review in accordance with § 960.8. The proposed agreement may not be implemented by the licensee until the licensee has been advised by the Administrator that the document's provisions are acceptable.

(i) Notification of any agreement that provides for an on-going or a continuous relationship serves as notification of specific transactions carried out within the scope of that agreement for purposes of the regulations in this part and the Act. Such notification does not relieve a licensee of any obligation under any other laws including U.S. export laws or regulations to secure necessary USG authorizations and/or licenses, to provide notification, or to comply with other requirements.

(ii) A licensee seeking to enter a foreign agreement that would require the modification of the terms of an existing license shall submit a license amendment, as provided in § 960.7.

(6) In accordance with Section 201 (e) of the Act and § 960.12, a licensee shall make available on reasonable commercial terms and conditions, in accordance with the Act and § 960.12, any unenhanced data designated by the Assistant Administrator.

(7) A licensee shall provide to the U.S. Government, upon request, a complete list of all archived, unenhanced data which has been generated by its licensed system which is not already maintained in a public catalog. Any information on this list which is deemed proprietary by the licensee should be so noted by the licensee when the list is provided to the U.S. Government.

(8) A licensee shall make available unenhanced data requested by the National Satellite Land Remote Sensing Data Archive ("the Archive") in the Department of the Interior on reasonable cost terms and conditions as agreed by the licensee and the Archive. After the expiration of any exclusive right to sell, or after a reasonable period of time, as agreed with the licensee, the Archive shall make these

data available to the public at a price equivalent to the cost of fulfilling user requests.

(9) Before purging any licensed data in its possession, the licensee shall offer such data to the Archive at the cost of reproduction and transmission. The Archive shall make these data available immediately to the public at a price equivalent to the cost of fulfilling user requests.

(10) A licensee shall make available to the government of any country (including the United States) upon request by that government, unenhanced data collected by its system concerning the territory under the jurisdiction of such government. The data shall be provided as soon as the licensee is able to distribute the data commercially or as soon as the licensee has processed them into a format that the licensee uses for its own purposes, whichever occurs sooner, on reasonable terms and conditions. However, no data shall be provided to the sensed state if such release is contrary to U.S. national security concerns, foreign policy or international obligations or is otherwise prohibited by law, *e.g.* where transactions with the sensed state are prohibited by the laws of the United States. The USG may require, as a specific license condition, coordination with NOAA prior to fulfilling specific sensed state requests for unenhanced data.

(11) A licensee shall inform the Assistant Administrator immediately of any operational deviation or proposed deviation of the system which would violate the conditions of the license. If advance notice is not possible because of an emergency posing an imminent and substantial threat to human life, property, the environment or the system itself, the licensee shall notify the Assistant Administrator of the deviation as soon as circumstances permit.

(12) A licensee shall dispose of any satellites operated by the licensee upon termination of operations under the license in a manner satisfactory to the President. The licensee shall obtain approval from the Assistant Administrator of all plans and procedures for the disposition of satellites as part of the application process.

§ 960.12 Data policy for remote sensing space systems.

(a) In accordance with the Act, if the U.S. Government has or will directly fund all or a substantial part of the development, fabrication, launch, or operation costs of a licensed system, the license shall require that all of the unenhanced data from the system be made available on a nondiscriminatory basis except on the basis of national security, foreign policy or international obligations.

(b) If the U.S. Government has not funded and will not fund, either directly or indirectly, any of the development, fabrication, launch, or operations costs of a licensed system, the licensee may provide access to its unenhanced data in accordance with reasonable commercial terms and conditions, subject to the requirement of providing data to the government of any sensed state, pursuant to § 960.11(b)(10), and to implementation of the licensee's plan, as contained in its application, to provide widespread access to its unenhanced data for non-commercial scientific, educational or other public benefit purposes.

(c) If the U.S. Government has (either directly or indirectly) funded some of the development, fabrication, launch, or operations costs of a licensed system, the Assistant Administrator, in consultation with other appropriate U.S. agencies, shall, subject to national security concerns, determine whether the interest of the United States in promoting widespread availability of remote sensing data on reasonable cost terms and conditions requires that some or all of the unenhanced data from the system be made available on a nondiscriminatory basis in accordance with the Act. The license shall specify any data subject to this requirement. In making this determination, the Assistant Administrator may consider:

(1) The extent and proportion of private and federal funding of the system;

(2) The extent of the governmental versus the commercial market for the unenhanced data;

(3) The effect of a nondiscriminatory data access designation on the applicant's commercial activity;